

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, FEBRUARY 28, 2017
MEETING ROOM B, CLAY COUNTY COURTHOUSE

Members Present: Chair Amos Baer, Perry Bushaw, Greg Anderson, Pamela Harper

Members Absent: Paul Krabbenhoft

Others Present: Tim Magnusson, Lynne Spaeth, Steven Beitelspacher, Paul Wibe, Anna Jean Wibe, Daniel Moore, Brian Leiseth, Richard Brenneman, Marie Kading, Kenneth Kading, Dave Schlotfeldt, Marsha Keeping, Rick Weaver, Lois Doxie, Chad Murray, Jamie Lewis, Mary Lewis, Chris Guida, Bill Henning, Beverly Henning, Larry Henry, Ronald Knoll, Alyssa Bakken, Geoff Bakken, Tony Paul, Claudia Murray, Berta Teschendorf, Steve Opatril, Glen Morton.

On motion by Greg Anderson, seconded by Pamela Harper, and unanimously carried, the Board approved the agenda as written.

On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board approved the minutes from December 20, 2016 as written.

NORTHWEST EXCAVATING LLC - REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to allow a reduction in the required setbacks for an asphalt plant from a property line and a residence. The County Code requires plants to be 300 feet from an adjoining property line and 1,000 feet from a residence. The property is in the SW Quarter NE Quarter and NW Quarter SE Quarter, Section 17, T138N, R48W (Kurtz Twp.) in the Agricultural General (AG) zoning district.

On motion by Perry Bushaw, seconded by Greg Anderson, and unanimously carried, the Board opened the public hearing.

Tim Magnusson presented a map pointing out the proposed location. He explained that some land had been platted a few years back and Knife River established a concrete plant. The proposed site is south of that plant. He showed a proposed site plan evidencing access from Highway 75. The applicant's intent is to plant trees to screen the plant, and the rest of the area would be left as an agricultural field. There is a residence to the south and Magnusson pointed out other residences. He explained it was approximately 40 acres and the applicant would be utilizing the northeast corner of it. Magnusson identified the 1,000-foot setback and line where the setback was requested on another map. He indicated that Knife River had also applied for a variance for a setback to property lines and that variance was granted. Magnusson provided copies of those minutes to the Board. He indicated that a concrete plant is quieter than an asphalt plant and there may be some dust but the odor is not present. The property owners and Township had deemed the same. Magnusson had been in contact with MNDOT and confirmed their involvement.

Magnusson informed the Board that a purchase agreement had been entered into by the applicant and the property owner. Correspondence from the property owner was included in the Board packets but Magnusson clarified this letter was drafted before the owner was aware of the asphalt plant.

The Township had met with Magnusson and hold a position that if it was just a stockpiling of material, they would not have an issue with it. They would, however, have an issue with the asphalt, as does the property owner.

The applicant, Steve Opatril, of Northwest Excavating, was present to answer questions. He presented a brief history of how this issue evolved into the variance application. Originally the company was looking for a location to do stockpiling and concrete. They approached Karlstrom Farms to see if he was interested in selling any land. Karlstrom was only willing to sell 40 acres.

Opatril explained to obtain a permit for stockpiling and crushing in the county, it must fall under an asphalt, concrete or mining permit. Northwest opted to go with asphalt to begin the permit process. FM Asphalt approached the applicant inquiring if they would be willing to subshop with them, a small portable plant. The Township had approved 20 acres of the land for the applicant's intended use. He went on to say that for the next 5-10 years, the 10 acres would suffice and the remaining 20-30 acres would remain agricultural. The operation would be active from May to November and it would not be a big plant. The applicant presented a handout of the new state of the art plan. He assured that the noise is minimal and the plant would burn on natural gas and propane so the odor would be minimal as well. He clarified that they had approval from the Township for the mining and stockpiling but had not for the asphalt because the Township had not met again.

Tony Paul, who has worked with Steve in this process, spoke in favor of the variance and presented a handout from the manufacturer referencing decibel breakdowns and maps of proximity of an asphalt plant in Dilworth to the numerous homes that have been built there.

Dan Moore, who owns property to the northeast, spoke out against the variance. He was concerned about the amount of truck traffic and the amount of oil that will be transferred in and out. He has resided there for 40+ years and fears it would hurt the valuation of the surrounding properties. He explained that Knife River is unloading late at night and it is noisy. He is not happy about stockpiling but is very much against asphalt, truck traffic, and noise.

Richard Bannerman, who resides to the south, stated that he can hear the concrete plant from his house, one-fourth mile away. He contended that it is going to double the noise and odor. He described that he had been there for 70 years and didn't understand why they needed an asphalt plant at this time. He said noise and smell would increase as well as the traffic.

Kenneth Kading, spoke against the variance asserting that rock crushing is extremely noisy. To add, he said the smell is noticeable while driving on the highway by the Dilworth plant. He opines that a housing development would never occur if this type of plant existed.

Brian Leiseth, Supervisor of Kurtz Township, approached and said he was not opposed to the variance at first, but after learning about the asphalt, he disapproves. He said the Township had approved the variance with the original intended use, but had not voted as far as the asphalt plant issue. He added that Kurtz Township has zoning ordinances.

Glen Morten, owner of property to the north, said at the time of purchasing the property the intent was to set up a commercial industrial park with businesses. Now that Knife River is there, there is more traffic. During construction season, there can be 25-50 trucks a day. He feels this changes the character of the community. He doesn't see this as a good thing for the area and it was never the intent.

On motion by Greg Anderson, seconded by Pamela Harper, and unanimously carried, the Board closed the public hearing.

Discussion commenced regarding highway commercial zoning and permits. Magnusson clarified from the ordinance that you cannot stockpile or crush unless it is in association with mining, a ready mix plant or batch plant. There is no provision in the ordinance for stockpiling.

On motion by Perry Bushaw, and seconded by Pamela Harper, and unanimously carried, the Board of Adjustment denied the variance request for Northwest Excavating to place an asphalt plant (on property located in the SW Quarter NE Quarter and NW Quarter SE Quarter of Section 17, T138N R48W) 50 feet from an adjoining property line (instead of 300 feet) and 500 feet from a residence (instead of 1,000 feet), for the following reason: There was no practical difficulty.

GREAT BASIN INC./NUGGET INVESTMENT LLC - REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to allow a reduction in the required setback for a platted subdivision from a feedlot. The County Code requires a platted subdivision to be located at least one-half mile from a feedlot. The affected property is in the NE Quarter, Section 17, T139N, R45W (Hawley Twp.) in the Agricultural General (AG) and Resource Protection-Aggregate (RP-Agg) zoning districts. A rezoning from RP-Agg is pending.

On motion by Greg Anderson, seconded by Pamela Harper, and unanimously carried, the Board opened the public hearing.

Magnusson indicated that the rezoning on both parcels had been approved by the County Board. Next, he presented a slide of the preliminary plat, pointing out the 10 lots on the south side, and one large block on the north side of the road. The issue is the one-half mile setback from a feedlot to a platted subdivision. Magnusson pointed out the Lewis' Subdivision and the active feedlot area. The permit applies to the entire parcel regardless of feedlot activity or not. He stated that 32.5 acres are within the one-half mile impact area. The proposed subdivision would lose 2-3 lots on the west end.

Magnusson explained how the variance, if granted, would be reciprocal. The subdivision could impact the feedlot owner's ability to expand. Furthermore, Magnusson explained the differences

and setbacks between a single lot subdivision and a platted subdivision. Discussion and questions followed regarding the aforementioned.

The applicant was sent correspondence and public notice requesting attendance at the meeting, but did not appear.

No one was present to speak in favor of the request but numerous individuals were present to speak against it.

Mark Lewis, the feedlot owner, clarified that he had considered expanding in the past and that expansion would be to the east.

Larry Henry, a neighbor of the Lewis', stated that if the variance was granted, it would restrict the expansion of the feedlot that has been present for many years. He has an issue with prohibiting future expansion.

Paul Wibe, also a neighbor to the north, echoed Henry's thoughts. He stressed that the Lewis' had been good neighbors and he was against prohibiting possible expansion.

Magnusson added that precedence should not be merited and each situation should be reviewed and discussed on its own merit.

Anna Jean Wibe, a neighbor of Lewis expressed how the feedlot was Lewis' livelihood and they should have the privilege to expand their business. She feels we should be promoting agriculture.

Kathleen Smith spoke out against the variance and questioned what the practical difficulty would be.

Rick Weaver, Hawley Township Supervisor, stated that the applicant had not come before the Township. He stated that the Township is adopting the County Ordinance, and further voiced his opinion against granting the variance because the owners should have the choice to expand their feedlot.

Bill Henning, approached and agreed with Weaver's opinion and those in opposition to the variance. He is in support of the Lewis'.

On motion by Pamela Harper, and seconded by Greg Anderson, and unanimously carried, the commission closed the public hearing.

Discussions resounded on the rationale of granting the variance and practical difficulties or lack thereof.

On Motion by Greg Anderson, and seconded by Pamela Harper, and unanimously carried, the Board of Adjustments denied Great Basin's request to allow a subdivision (located in the NE Quarter, Section 17, T139N, R45W, Hawley Township) to be located less than one-half a mile from a feedlot for the following reason: Since 70% of the parcel is still available for

potential development without needing a variance, it does not appear that there is a valid practical difficulty associated with this request.

On motion by Greg Anderson, and seconded by Perry Bushaw, the meeting was adjourned at 6:52 p.m.

By: _____
Amos Baer, Chair